

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

1. PARTIES

A. Address

THIS AGREEMENT FOR THE SUPPLY, MANAGEMENT AND SUPPORT OF MULTIFUNCTION DEVICES THAT CAN PRINT, COPY, FAX AND SCAN ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **XEROX CORPORATION** ("Contractor"), a Delaware corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
City Purchasing Agent City of Houston P.O. Box 1562 Houston, Texas 77251	Xerox Corporation 5152 San Felipe, Suite 1100 Houston, TX 77056 Phone: (713) 402 - 5363

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. Scope of Services
- A-1 Device Schedule by City Installation Site, Model Number & Monthly Cost
- A-2 Technical Specifications Of The Six Device Models Supplied Under This Agreement
- B Monthly Cost For Each Device Model Supplied Under This Agreement
- C. Performance Requirements
- D. MWBE Subcontract Terms
- E. Equal Employment Opportunity
- F. Drug Policy Compliance Agreement
- G. Drug Policy Compliance Declaration
- H. Certification of No Safety Impact Positions

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

XEROX CORPORATION

CITY OF HOUSTON, TEXAS

Signed by:

By: James C. Cantrell
Name: JAMES C. CANTRELL
Title: Director, Services and Solutions

By: _____
Mayor

ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

ATTEST/SEAL:

By: _____
Name: _____
Title: _____

City Secretary

APPROVED:

COUNTERSIGNED BY:

Edmund Swales
City Purchasing Agent

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. No. 0340500322001

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"Business Day" means an eight-hour City work day.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Department" means a City of Houston Department that through the City Purchasing Agent orders a Device under this Agreement for use by End-Users in that Department.

"City Purchasing Agent" means the City's Purchasing Agent or the person he or she designates.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Devices" mean machines provided by Contractor under this Agreement that can be used by City End-Users to copy, print, scan and fax documents and when connected to the City's computer network allow City End-Users to send commands from their personal computers to the Devices to perform such functions on the Devices from their own workstations.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

“End-User” means an employee or agent of the City who uses the Devices provided by Contractor under this Agreement.

“Impression” means a hard copy of a document made by a City End-User on a Device provided by Contractor under this Agreement, including a facsimile and scan confirmation page provided by the Device and a facsimile page received over a Device.

"Installation Sites" mean City locations listed in Exhibit "A-1" where Contractor shall provide Devices under this Agreement and any other City locations where City Purchasing Agent requires Contractor to install Devices under this Agreement.

“Monthly Cost” is the fixed monthly equipment fee for each model Device proposed by Contractor in response to City’s RFP TC-5-0739-010-203445 and the Monthly Cost for the total number of Devices in use at various City Installation Sites under this Agreement equals the Monthly Minimum Charge payable by City to Contractor under this Agreement.

“Monthly Minimum Charge” is the monthly equipment fee for Devices installed in the City under this Agreement and is the total of the Monthly Cost for each Device installed in the City under this Agreement.

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

“Parties” mean all the entities set out in the Preamble who are bound by this Agreement.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

B. Coordinate Performance

Contractor shall coordinate its performance with the City Purchasing Agent and other persons that the City Purchasing Agent designates. Contractor shall promptly inform the City Purchasing Agent and other person(s) of all significant events relating to the performance of this Agreement.

C. Personnel of Contractor

Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the City Purchasing Agent.

D. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

E. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO

PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

F. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

G. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

H. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

I. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

J. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
 - \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period,

Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the City Purchasing Agent, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

K. Warranties

Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods it furnishes, Contractor warrants:

- (1) that all items are free of defects in title, design, material and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

L. Replacement Warranty

Contractor warrants that during the term of this Agreement, all Devices Contractor provides to the City under this Agreement shall be free from defects in workmanship and materials and that at any time during the term of this Agreement, Contractor shall replace defective Devices which fail to function for any reason upon being notified by the City Purchasing Agent.

M. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the City Purchasing Agent authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

N. Use of Work Products - City may use all documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the City Purchasing Agent on request. Within five working days after this Agreement terminates, Contractor shall deliver to the City Purchasing Agent the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

O. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the City Purchasing Agent of any suspension, revocation, or other detrimental action against his or her license.

P. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

Q. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "E".

R. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

(a) a copy of its drug-free workplace policy,

- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "H."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

S. Minority and Women Business Enterprises

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 24 % of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding arbitration in Houston, Texas, if directed to do so by the Affirmative Action Director. All agreements must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

T. Contractor's Performance

Contractor shall make End-User satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with End-Users when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the City Purchasing Agents opinion, Contractor is not interacting in a

positive and polite manner with End-Users, he or she shall direct Contractor to take all remedial steps to conform to these standards.

IV. DUTIES OF THE CITY

A. Payment Terms

City shall pay and Contractor shall accept a Monthly Minimum Charge equal to the Monthly Cost (set out in Exhibit "B") of all Devices in use at the City in that month. Contractor shall prorate the Monthly Cost of Devices in use for a portion of the month. In the event City uses 600 Devices at various City Installation Sites as proposed by Contractor in Exhibit "A-1", then City shall pay Contractor a Monthly Minimum Charge of \$102,415.92. In addition to the applicable Monthly Minimum Charge, City shall pay Contractor \$0.007 per black and white Impression and \$0.098 per color Impression made on the Devices in use in the City during that month. The rate per Impression for both black and white and color Impressions is valid for the entire term of this Agreement and the rate per Impression is not subject to any volume commitment on the part of the City either in terms of the total number of Impressions made on the Devices or the total number of Devices in use in the City at any given time during the term of this Agreement.

1. Addition of Devices

In the event a City Department requests the City Purchasing Agent for a Device, then the City Purchasing Agent shall instruct Contractor to install the Device model selected by the City Department at the City Installation Site identified by the Department. Contractor shall add the Device model selected by the City Department and as of the date that the Device is installed for use in the requesting City Department, that Device shall be subject to the terms of this Agreement. Contractor shall add the Monthly Cost to the Minimum Monthly Charge being paid by the City from the date the

City Department requesting the Device uses the Device to make Impressions and charges of \$0.007 per black and white Impression and \$0.098 per color Impression made on that Device shall accrue from the date that the Device is used by the Department to make such Impressions.

2. Deletion of Devices

At any time during the term of this Agreement, the City Purchasing Agent may notify Contractor in writing to delete a Device provided by Contractor under this Agreement. On receiving the notice, Contractor shall discontinue providing the City with that Device at the City Installation Site identified in the notice effective the day Contractor receives the notice. After Contractor submits an invoice to City with the Monthly Cost for that Device as part of the Monthly Minimum Charge paid by City and for Impressions made on that Device prior to the date of the City Purchasing Agent's notice, Contractor shall exclude both the Monthly Cost for the deleted Device from the City's Monthly Minimum Charge and all charges for Impressions on the Device deleted by City Purchasing Agent from invoices submitted after the Monthly Cost and charges for Impressions on that Device prior to the effective date of the notice have been paid by City.

B. Performance Requirements & Credits for Unavailability of Devices

Contractor shall be responsible for meeting the requirements set forth in Exhibit "A", Scope of Services. Contractor's compliance with the Performance Requirements detailed in Exhibit "C" shall be the measure of whether it meets the requirements set out in Exhibits "A" and "C". Contractor shall credit the City for periods when Devices are unavailable for use by City End-Users because Contractor was unable to respond to service calls within four hours or because upon responding to service calls, Contractor's technicians were unable to complete repairs within four hours of their arrival. Contractor shall calculate the average Impressions made by City End-Users during a given

Business Day by calculating the total volume of monthly Impressions on that Device during the previous month, dividing the same by the number of Business Days during that month and dividing the same by eight to arrive at the average number of Impressions made on that Device in an hour. Contractor shall calculate the total number of Impressions that would have been made on that Device during the hours that the Device was unavailable to City End-Users and provide City with a credit at the rate of \$0.007 per black and white and \$0.098 per color Impression in the following month's invoice to the City.

C. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The City Purchasing Agent will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

D. Method of Payment

The City shall pay Contractor on the basis of monthly invoices submitted by Contractor by electronically reading the meter readings of Impressions made on all Devices connected to the network and manually reading the same on Devices that are not so connected, less credits as set out in IV, B above, if any. Contractor shall submit such invoices to the City Purchasing Agent for validating the readings and for approval. In addition to the readings of Impressions, Contractor shall list the applicable Monthly Cost for each Device and show the applicable Monthly Minimum Charge for that month on each invoice. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

E. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the City Purchasing Agent shall temporarily delete the disputed item and pay the remainder of the invoice. The City Purchasing Agent shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

F. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$600,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the CIO and the City Controller to Contractor in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the City Purchasing Agent, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the City Purchasing Agent)
City Purchasing Agent

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

G. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where the Installation Sites are located together with all facilities, equipment, improvements, and services

provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement ("Initial Term").

B. Renewals

If the City Purchasing Agent, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two successive one-year terms upon the same terms and conditions except that the Monthly Cost for each Device Model listed in Exhibit "B" shall be reduced by a total of 10% for both terms.

C. Termination for Convenience by City

The City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed,

but not already paid for, in the same manner as prescribed in Section IV, A unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

If Contractor defaults under this Agreement, the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If default occurs, the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent

allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected

party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City Purchasing Agent will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the City Purchasing Agent is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the City Purchasing Agent may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE**

**UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO
FORCE MAJEURE.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The City Purchasing Agent is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the City Purchasing Agent, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Purchasing Agent is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this

Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the City Purchasing Agent.

O. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Device passes from Contractor to City upon acceptance by the City.

P. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

Q. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

R. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

S. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

T. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"

SCOPE OF SERVICES

1. Contractor warrants that the six Device models listed in Exhibit "B" with the technical specifications for each model set out in Exhibit "A-2" proposed by Contractor in response to City's RFP TC-5-0739-010-203445 meet the City's requirement for multi-function Devices that:
 - a) are technically the latest models in each equipment category
 - b) offer cost benefits to the City through low recurring charges and high productivity;
 - c) can be used continuously without compromising quality at various City locations;
 - d) can copy, scan and print documents (from network too) at high speeds while retaining resolution quality without the machines breaking down;
 - e) can scan to file and e-mail;
 - f) have enough capacity to be deployed at various City Installation Sites according to usage patterns; and
 - g) can fax documents (except models WorkCentre 90 & WorkCentre C2424DX) and offer features such as duplexing, collating and stapling.
2. Contractor also warrants that the six Device models (including the software that is loaded on such models) proposed by Contractor in response to City RFP TC-5-0739-010-203445 are already in use in the market and are not models that are being tested for release.

3. The City currently has 611 black-and-white and 30 color copiers, of which 362 copiers are connected to the City's IP network and 302 connected to analog lines to allow City End-Users to fax messages via these copiers (some copiers are connected to both). In its Best and Final Offer, Contractor proposed 600 Devices to meet the current needs of City End-Users at various City Installation Sites. Contractor shall install 600 Devices at City Installation Sites by substituting its Work Center C2424DX Device that can copy, scan and print both in black-and-white and color while using half the floor space, electricity and End-User training to replace two Devices at many City Installation Sites.
4. Contractor shall deliver and install the Devices it proposed in its Best and Final Offer as set out in Exhibit "A-1" at City Installation Sites listed in Exhibit "A-1", 60 days from the date the City Purchasing Agent issues Contractor the Notice to Proceed letter.
5. After installation, Contractor in consultation with the City Purchasing Agent shall monitor Device usage at all City Installation Sites for a period of 60 days and evaluate usage patterns to see if some Devices need to be moved to other City Installation Sites or if other models of Devices (based on the Reliability Performance Range of Device models set out in Exhibit "B") need to be installed at some City Installation Sites to best meet the needs of City End-Users.
6. During the term of this Agreement, Contractor shall work with the City Purchasing Agent to redeploy or reassign the Devices based on the needs of the City Departments where such Devices are installed. Contractor shall have enough

Devices in its inventory to enable Contractor to add Devices or replace older Devices on which the number of Impressions made exceed the Performance Reliability Range for that Device model set out in Exhibit "B" or malfunctioning Devices with new units based on the needs of City End-Users.

7. Contractor shall provide the City Purchasing Agent with periodic reports and briefings on Device usage and whether the Performance Requirements listed in Exhibit "C" are being met by Contractor. Contractor's representatives assigned to the City account shall have quarterly meetings with the City Purchasing Agent to discuss Performance Requirements issues raised by the City Purchasing Agent and brief City Purchasing Agent about measures taken to address such issues as well as to suggest ways to improve Device usage trends, Device availability, technical support issues, response times and ways to improve the productivity of Devices in City locations. The City will maintain a database on each Device to track meter readings on each Device, the location of the Device and the City Department's use of that Device.
8. Contractor shall provide all new, digital equipment and shall ensure that it does not deploy any used, refurbished, or repackaged Devices at any City Installation Site under this Agreement.
9. Contractor shall ensure that all Devices it provides to City under this Agreement meet the requirements of the City's Information Technology Policy regarding networked Devices and software used to run such Devices.
10. **DEVICE SOFTWARE**

- a) Contractor warrants that Contractor's Center Ware Web program proposed by Contractor in response to City's RFP TC-5-0739-010-203445 meets the City's requirement for Device software that:
 - i. manages and supports the Devices;
 - ii. reports on usage patterns, troubleshoots and alerts when the Device needs to be serviced;
 - iii. makes the Device user-friendly;
 - iv. minimizes contract administration costs; and
 - v. optimizes Device availability and performance.
- b) Specifically, Contractor warrants that Contractor's Center Ware Web program will:
 - i. enable authorized personnel to configure Devices, check Device status, troubleshoot problems, track print usage and change settings via a Web browser;
 - ii. allow for group-based management of many printers as if they were one;
 - iii. proactively monitor Device status and provide alerts on printer problems;
 - iv. track Device usage over time to find the best fit for Devices within the City; and
 - v. protect unauthorized changes by leveraging Windows 2000 and/or NT4 native security.

- c) Contractor warrants that Contractor's Center Ware Web program with the following hardware and software requirements meets the City's technical requirements:
- i. 600 MHz Pentium-compatible CPU, 512 MB of RAM, 2 GB hard disk with a minimum of 700 MB of total free space and CPU and RAM resources of Pentium III 800 MHz or higher and at least 1 GB of RAM;
 - ii. Software requirements of Windows XP: Internet Information Services 5.0 or higher with Front Page Extensions, with Microsoft Windows 2000;
 - iii. Professional or Advanced Server and Internet Information Services 5.0 or higher, with Front Page Extensions; and
 - iv. Microsoft Windows Server 2003: Internet Information Services 5.0 or higher, with Front Page Extensions.
- d) **Scanning Software**
- Contractor shall provide ScanSoft's Paper-Post and OmniPage Pro desktop scanning software, which is fully compatible with Windows 95, 98, ME, NT, 2000 & XP.
- e) **Production Software**
- Contractor shall provide the DigiPath software application that resides on Contractor-supplied and supported Dell platform running Windows XP to manage documents on the Devices provided under this Agreement.

11. TRAINING

- a) Contractor shall provide Devices with user interface panels that City End-Users are already familiar with resulting in a shorter learning curve.
- b) During the 60-day period when Contractor installs 600 Devices under this Agreement, Contractor shall provide the City with a team of trainers to train City End-Users in operating the new Devices located in their offices.
- c) During the term of this Agreement, Contractor shall provide a dedicated trainer to schedule training sessions for City End-Users upon receiving notice from the City Purchasing Agent that a City Department has requested for such training for End-Users identified by that Department or when new Devices are installed at a City Installation Site or when Contractor upgrades Devices supplied under this Agreement.
- d) Contractor's dedicated trainer shall conduct such End-User training sessions either on-line or in person, for groups of City End-Users or one-on-one sessions as directed by the City Purchasing Agent.

Key Operator Training

- e) Contractor's trainers shall provide Key Operators identified by City Departments to handle such duties with hands-on training in how to:
 - i. use the features on the Device and the functions of each such feature;
 - ii. install print queues;
 - iii. install and utilize the print driver on the Device;

- iv. submit print jobs from a single network client;
- v. use the features of the print drive so that they can use advanced features such as cascade printer driver installation and configuration to remaining network clients based on requirements;
- vi. use the Web-based printer access feature;
- vii. validate key application settings; and
- viii. trouble shoot problems.

End-User Training

- f) Contractor shall provide City End-Users with training in how to operate the Devices and maintain the Devices by replenishing toner, developer, staples and by clearing paper jams.
- g) Contractor shall provide its CD ROM with each Device that contains instructions on the basic operation and maintenance of the Device titled, "Training and Information" user guide.
- h) In addition, Contractor's dedicated trainer shall provide on-site training sessions of 1.5 to 2.5 hours that will:
 - i. instruct End-Users on how to use the Training and Information CD ROM;
 - ii. give End-Users a product overview including Device features and their functions;
 - iii. review the Copy features on the Device especially as it pertains to documents most used by End-Users;

- iv. review the functions of the print driver;
- v. review the scanning capability of the Device;
- vi. show how to load paper and media;
- vii. provide an overview of general maintenance tasks; and
- viii. demonstrate how to troubleshoot.

System/Network Administrator Training

- i) Contractor shall provide training to City IT staff on the software and the networking features on the Devices, as requested.

12. TECHNICAL SUPPORT

Managed Services Help Desk

- a) Contractor shall provide the City with its Managed Services Help Desk staffed with its Customer Service Representatives to support City End-Users in the various departments where the Devices are located.
- b) Contractor's Managed Services Help Desk will take calls from End-Users on both printer and Device problems. Contractor's Customer Service Representatives shall assess the problem and dispatch either a DocuCare Associate or service technician (see (g) & (k) below) to resolve the problem.
- c) Contractor warrants that Contractor will answer 80% of all calls to this help desk from City End-Users within 20 seconds.

- d) Contractor shall provide City End-Users at City Installation Sites with the option of calling Contractor's help desk via a toll free telephone number, or via facsimile or e-mail.
- e) Contractor shall provide the City Purchasing Agent with comprehensive monthly reports on the calls to its Managed Services Help Desk from City End-Users that detail the following:
 - i. Total number of service calls
 - ii. Number of remote call solves
 - iii. Number of technician dispatches
 - iv. Downtime per machine
 - v. Meter reads
 - vi. Total number of supplies order calls
 - vii. Number of supplies ordered per serial number
 - viii. Supplies costs (chargeable and non-chargeable)
 - ix. Number of issues escalated
- f) Contractor shall provide three on-site trained technical support specialists ("DocuCare Associates") to respond to Device problems as and when they arise.
- g) Contractor's DocuCare Associates shall conduct preventive maintenance procedures to maximize equipment uptime by inspecting the Devices on a scheduled basis.

- h) Contractor's DocuCare Associates shall provide key operator functions such as regular cleaning of platen glass, checking paper and toner supplies to reduce Device downtime.
- i) In addition to the three DocuCare Associates, Contractor shall provide a fourth Associate who shall troubleshoot any problems with the software and networked Devices upon being notified by the City's IT staff.

Service Calls

- j) Contractor shall provide the City with a full-service maintenance plan to cover all the Devices for parts, labor and time necessary to conduct repairs.
- k) Under the plan, Contractor shall provide service technicians from its facilities that are located closest to the City Installation Site where the Device requires to be repaired or serviced.
- l) Contractor shall assign a Team Leader for each Device model to allow the Team Leader to dispatch a service technician to respond to the City's request for repairs.

Supplies

- m) Contractor shall supply copy/print cartridges, toner containers, and other supplies to provide the City with Devices designed to:
 - provide maximum uptime
 - reduce machine contamination
 - decrease unscheduled service calls
 - eliminate document waste

- n) City Departments shall ship the cartridges and toners in their containers using prepaid postage labels provided by Contractor to enable Contractor to recycle these items under its Green World Alliance Reuse/Recycle Program.
- o) Staples, binding tape, paper and other specialty supply items shall be provided by the City.

13. **COMMUNICATIONS NETWORK COMPATIBILITY/NETWORK INFRASTRUCTURE**

Contractor warrants that the Devices proposed by Contractor in response to City's RFP TC-5-0739-010-203445 are compatible with the City's network and meet the technical requirements set out below:

- a) Fast Ethernet internal print server;
- b) 802.11b wireless internal print server;
- c) Bluetooth wireless print adapter;
- d) USB interface;
- e) Connectivity for USB or serial or LocalTalk or parallel port; and
- f) 10/100 Base T network port options.

14. **ENTERPRISE APPLICATION**

Contractor's warrants that Contractor's proposed software, Xerox CenterWare Web shall provide the City with an enterprise-wide application that:

- a) is compatible with Windows 2000, XP and NT;

- b) has the capacity to manage and support an entire enterprise of Simple Network Management Protocol (SNMP) printers and multifunctional Devices connected to the network;
- c) has the ability to install queues, configure, manage, monitor and report on any type of SNMP Device regardless of manufacturer;
- d) can set display preferences to show relevant information for the job at hand from any desktop;
- e) can provide clear and concise status of all networked Devices, with the ability to group printers in a way that best fits the environment, and provide sorting, filtering and search capabilities;
- f) has an intuitive user interface using common and familiar folder tab and tree structure to ensure ease of use;
- g) has ability to view, promote, release and delete all jobs, current and pending from individual users' desktops;
- h) has Internet management capability to allow system administrators to manage the diverse environments from a single server using their browser from any desktop;
- i) has ability to initiate troubleshooting tests and be able to display the results on single or multiple Devices;
- j) offers an e-mail alert system with the configurable alert detection settings to detect faults;

- k) provides links to embedded web servers for specific Device configuration;
and
- l) has ability to generate user-customized reports.

Reporting

- m) Contractor's CentreWare Web software shall track how the City's printing products are being used, and by whom.
- n) City has the option to order at an additional cost Contractor's XCounter software on Devices where the City needs to map copies back to individual users or departments in City locations where several departments are sharing Devices, if, subject to the allocation of funds, the City Purchasing Agent requests Contractor for such an option.

Driver Management

- o) Contractor's DocuCare Analyst shall coordinate the installation, update and tracking of Device drivers.
- p) Contractor's DocuCare Analyst shall work closely with the City's IT Department to make Device drivers compatible with any changes in the City's software or network infrastructure.

Print Management

- q) Contractor through its CenterWare Web software shall manage Device printers proactively by:
 - i. monitoring the equipment and dispatching instant e-mails if a problem is detected;

- ii. dispatching a DocuCare Associate or service technician to the site if repairs cannot be done remotely
- iii. monitoring printer usage by viewing all network printing products and dispatching service technicians if required; and
- iv. maintaining, supporting and troubleshooting problems with City printers.

15. PRINT SERVICES

Contractor shall manage print services by providing Devices that:

- i. update drivers and configurations automatically;
- ii. lock down printers to prevent configuration changes by unauthorized personnel;
- iii. remove the burden of print management from file servers;
- iv. have copy controller hard drive for copy jobs storage and image overlays; and
- v. have features such as print jobs retention, etc.

16. PRINT LANGUAGES

Contractor shall provide Devices that use the following formats and print languages:

- i. HP PCL 6
- ii. PostScript Level 3 emulation
- iii. direct PDF; and
- iv. and can automatically switch from one language to the other.

EXHIBIT "A-2"

TECHNICAL SPECIFICATIONS OF THE SIX DEVICE MODELS SUPPLIED UNDER THIS

AGREEMENT

EXHIBIT "A-1"

DEVICE SCHEDULE BY CITY INSTALLATION SITE, MODEL NUMBER & MONTHLY COST

EXHIBIT "B"

MONTHLY COST FOR EACH DEVICE MODEL SUPPLIED UNDER THIS

AGREEMENT

Contractor shall increase the Monthly Minimum Charge by the Monthly Cost for the Device model added and decrease the Monthly Minimum Charge by the Monthly Cost for Device model deleted as set out in Sections IV, A (1) and (2).

	Model Number	Monthly Cost	Reliability Performance Range
1.	WorkCentre Pro M20i	\$106.50	Up to 35,000
2.	WorkCentre C2424DX	\$363.12	Up to 30,000 B&W
3.	Document Centre 430	\$179.13	Up to 44,300
4.	WorkCentre Pro 245	\$301.40	Up to 50,200
5.	WorkCentre Pro 275	\$459.27	Up to 300,000
6.	WorkCentre Pro 90	\$577.60	Up to 400,000

EXHIBIT "C"

PERFORMANCE REQUIREMENTS

Performance Criteria	Measurement	Description	Calculation
Service Response Time	95% Response Time	MSHD answers calls from City within 2 minutes. If necessary, a DocuCare Associate will respond to End-Users within one hour.	The measurement for Service Response Time is calculated by dividing the total number of calls responded to in one hour or less by the total number of calls during each month.
Average Technical Service Response Time	95% Achievement of Target Response Time	The average amount of time between MSHD initiated service call and the arrival of the Service Technician at the site.	<p>The measurement for Average Technical Service Response Time is calculated by dividing the <i>Target Response Time</i> by the <i>Average Service Response Time</i> ("ASRT").</p> <p>Example:</p> <ul style="list-style-type: none"> • <i>Target Response Time</i> is the Xerox standardized response time. • <i>ASRT</i> is measured by dividing the <i>Sum of all Service Call Response Times</i> (this is done by adding up the total response times for all products) by the <i>Total Number of Service Calls</i>. • Target Response Time = 4 hours • Sum of Service Call Response Times = 49 hours. • Total Number of Service Calls = 12 $= 4 \text{ hours} / (49 \text{ hours} / 12 \text{ calls})$ $= 4 / 4.08 = 97.9\% \text{ Achievement of Target Response Time}$ <p>Note: Average Service Response Time is measured for the entire fleet and is calculated on a quarterly basis.</p>

Equipment Uptime ("Availability Hours")	95% Three Month Rolling Average Uptime	The three month rolling average percentage that the equipment is available for use during the term of the Agreement.	<p>The measurement for Equipment Uptime is calculated by dividing the (Availability Hours - Equipment Downtime) by <i>the Availability Hours</i>.</p> <ul style="list-style-type: none"> • Equipment Downtime is the <i>Total Service Response Time</i> plus <i>Machine-Repair Time</i> (excludes normal interrupts, e.g. lunch) <ul style="list-style-type: none"> - <i>Total Service Response Time</i> is the actual time the technician arrived on site minus the time the initial service call was placed if the machine is in a "down" (cannot make prints or copies) condition. - Machine-Repair Time is the time it takes the technician to repair the machine to be operational. <p>Availability Hours is the contracted period of coverage for that machine. (Equal to the total number of working days per month times 8 hours for each shift.) Example. One shift for month of March with no holidays = 8 hours x 21 days = 168 hours.</p> <p>Example:</p> <p>Equipment Downtime = (Response Time + Repair Time)</p> <p><i>Total Service Response Time: 4 hours Machine Repair Time: 1 hour</i></p> <p>Equipment Downtime = (4 + 1) = 5</p> <p>Availability Hours: 21 x 8 = 168 Hours</p> <p>(168 - 5) / 168 = 97% Equipment Uptime</p> <p>Note: Availability Hours is calculated for the entire fleet of machines (multiply Contracted Period of Coverage hours by total number of machines) on a 3 month rolling average.</p>
Actual Asset Utilization	Target Utilization	Monthly impression activity within 30% of rated impression activity	Actual impressions divided by rated impression activity.

EXHIBIT "C"

PERFORMANCE REQUIREMENTS

Measure	Minimum Requirement
Response time to calls for service within 4 hours	95% of all service calls
Repair and maintenance calls completed within 4 hours of arrival	95% of all service calls
Full access to all device capacity and functions	95% availability during normal working hours
Repeat service call on same device within 30 days	Less than 2% of service calls
Monthly impression activity within 30% of rated impression activity	At least 70% but less than 130% of rated capacity by device
Impression activity ratio of network prints to copies	Initially, at least 10%, but grow to at least 40%
Timely and accurate meter readings for monochrome and color prints and copies	Submission of meter reading to contract administrator within 5 business days of cutoff date and with 99% accuracy
Timely installation of all multifunction devices	Within 60 days of notice to proceed
Provide initial training to all key users and End-Users in conjunction with device roll out	Satisfy training objectives and calendar, as proposed and negotiated
Sustain ongoing training on MFD functions and capabilities	Meet training program objectives that focus on periodic contact with all key operators and End-Users to maximize use of equipment capacity and functionality
Timely and effective resolution of customer service issues	Full compliance with customer service plan to effectively manage and monitor customer service issues, including timely escalation of issues to the appropriate decision making level

EXHIBIT "D"

MWBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within five business days of execution of this subcontract, Engineer (prime engineer) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
 - e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "E"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "F"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

	Random	Reasonable <u>Suspicion</u>	Post <u>Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "H"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

_____, _____ (Name)

(Title)

as an owner or officer of _____ (Contractor)

(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.

(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)